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Date: JANUARY 25, 2002

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Number of pages including this one: 4

Comments:

THIS COMMENT IS ALSO BEING SUBMITTED VIA EMAIL AND U.S. MAIL.

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24th January 2002

Renata B. Hesse
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To whom it may concern:

As a software developer with over 10 years of experience, I would like to comment on the United States v. Microsoft Corporation Revised Proposed Final Judgement (PFJ), published in the Federal Register on November 28, 2001.

My reading of the PFJ has lead me to an opinion that it will not adequately curtail Microsoft's exclusionary, anticompetitive, and predatory practices, and therefore does not serve the public interest. This comment describes a number of my concerns.

One concern I have about the PFJ is its expiration date. This supposed remedy is set to expire five years from the date it is entered by the Court, with a potential one-time extension of up to two years. Considering the fact that Microsoft has already been able to successfully circumvent judgements for Sherman Act infractions dating back to 1994, it seems unwise to limit the PFJ to a maximum term of seven years.

Section VI.N, the definition for "Non-Microsoft Middleware Product", includes a requirement that "at least one million copies were distributed in the United States within the previous calendar year." This is a ridiculous requirement, as it requires any Non-Microsoft Middleware Product to first struggle against and overcome Microsoft's monopoly power and the applications barrier to entry for at least one year before becoming eligible for protection as middleware under the PFJ. This numerical constraint should be eliminated.

Section III.C.1 grants Microsoft authority to restrict an OEM from displaying icons, shortcuts, etc. Granting this authority to Microsoft limits the ability of OEMs to compete through customization of their products. This section also does not clearly address middleware for which there is no Microsoft equivalent. Microsoft's authority to restrict the ability of OEMs to customize their systems should be eliminated.

Likewise, section III.C.2 prohibits OEMs from altering the user interface. This

infringes on the ability of OEMs to compete by modifying the user interface. Microsoft's authority to stop OEMs from modifying the user interface should be eliminated.

Section III.C.3 requires Non-Microsoft Middleware to display a user interface similar to the corresponding Microsoft Middleware Product. This limits the ability of middleware producers to compete through user interface innovation. Microsoft's authority to control the user interfaces offered by competing middleware should be eliminated.

Section III.C.4 requires that a non-Microsoft boot-loader be used when launching other Operating Systems. OEMs should not be restricted to using a non-Microsoft boot-loader for this purpose, and should be free to use any boot-loader, including a Microsoft boot-loader.

Section III.C.5 requires that the OEM comply with technical specifications established by Microsoft when presenting an IAP offer in the initial boot sequence. This limits the ability of IAPs to compete against Microsoft's IAP (MSN.com) and aids Microsoft in its efforts to extend its monopoly into the IAP business. Microsoft's authority to control competing IAP offers should be eliminated.

Section III.H.1 grants Microsoft authority to restrict users and OEMs from displaying icons, shortcuts, etc. Granting this authority to Microsoft limits the ability of users and OEMs to compete by customizing their systems. This section also does not clearly address middleware for which there is no Microsoft equivalent. Microsoft's authority to restrict the ability of users and OEMs to customize their systems should be eliminated.

Section III.H.2 grants Microsoft control over the way in which Non-Microsoft Middleware Products are presented to the user. This grants favored status to Microsoft Middleware Products and thereby impairs the ability of Non-Microsoft Middleware Products to compete. Microsoft's authority to control the way in which Non-Microsoft Middleware Products are presented to the user should be eliminated.

Section III.H also grants Microsoft the authority to impose technical requirements, such as the ability to host a particular ActiveX control, upon Non-Microsoft Middleware Products. However, Netscape 4.x, for instance, does not host ActiveX controls, in part due to the security risks they present. This authority should be eliminated.

Section III.J enables Microsoft to withold documentation for some of its APIs and communication protocols based on the pretense of protecting the security of specific installations. It also enables Microsoft to impose limitations on the audience to whom such API documentation is made available. However, there is a general consensus among computer security experts that the witholding of such documentation (a.k.a. security by obscurity) does not establish true computer security. Microsoft should not be allowed to withold documentation

for its APIs and communication protocols based on this pretense.

The PFJ also omits an important consideration. Much of the present and future competition to Microsoft comes from non-commercial Open Source and freeware software products such as Linux, Apache, Sendmail, Samba, and Wine. In January 2001, Microsoft president and CEO Steve Ballmer identified the Linux phenomenon as "threat number one." Apache and Sendmail are established mainstays of the internet. Samba and Wine enable non-Microsoft systems such as Linux to interoperate with (monopolistically entrenched) Microsoft systems. It is reasonable to expect that these and other Open Source and freeware software products are potential targets of Microsoft. Under the existing PFJ, Open Source and freeware software products receive very little consideration, as important portions of the PFJ apply only to companies that meet Microsoft's criteria as a business (see Section III.J.2). The PFJ should be revised to offer specific protection to Open Source and freeware software products.

The above briefly outlines several of my concerns regarding the PFJ. It is possible, even likely, that the PFJ contains additional significant flaws not mentioned here. I am of the opinion that the existing PFJ would completely fail to accomplish its stated purpose of providing "a prompt, certain, and effective remedy for consumers by imposing injunctive relief to halt continuance and prevent recurrence of the violations of the Sherman Act by Microsoft." The PFJ is in need of extensive rework and should not be accepted in its present form.

In addition to this comment, I have endorsed an open letter to the DOJ, written by Dan Kegel (of Los Angeles, California) and others. The open letter contains an analysis of deficiencies in the proposed Microsoft Settlement, along with suggestions for addressing those deficiencies. At the time of this writing, the open letter is visible on the internet at http://www.kegel.com/remedy/letter.html.

I hope the United States Department of Justice will take these comments into consideration and withdraw its consent from the PFJ. Failing that, I hope these comments will help the Court to reach a conclusion that entry of this PFJ does not serve the public interest.

Sincerely,

Joel Schneider

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